

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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JACOB LOFARO, PPA NICOLE))	
LOFARO,))	
))	
Plaintiffs,))	
))	
V.))	Civil Action No. 04-11297-MLW
))	
DEBORAH BRADLEY, LOUIS LAZ ¹ ,))	
and ASSOCIATES IN OBSTETRICS))	
& GYNECOLOGY,))	Formerly: Essex County
))	Superior Court
Defendants.))	Civil Action No.
<hr/>))	03-536

**MOTION TO DISMISS COUNTS IV THROUGH VI OF THE COMPLAINT AS THEY
APPLY TO DEFENDANT LOUIS LAZ, M.D.**

As more fully demonstrated in the accompanying Memorandum in Support, the United States of America, on behalf of the defendant, Louis Laz, M.D., respectfully requests that this Court dismiss with prejudice Counts IV through VI of the plaintiff's complaint in the above-captioned matter pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure as this Court lacks subject matter jurisdiction where the plaintiff has failed to timely file an administrative claim as required by the Federal Tort Claims Act. 28 U.S.C. § 2401(b).

¹A Motion to Substitute the United States of America as the Proper Party Defendant for Louis Laz, M.D., is pending.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

Dated: June 22, 2004

/S/ Christopher R. Donato
Christopher R. Donato
Assistant U.S. Attorney
U.S. Attorney's Office
John Joseph Moakley Courthouse
1 Courthouse Way, Suite 9200
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CERTIFICATE OF SERVICE

I hereby certify that on this day service of the foregoing Motion to Dismiss has been made upon the following by depositing a copy in the United States mail, postage prepaid to:

Andrew C. Meyer, Jr., Esq.
Robert Higgins, Esq.
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Charles P. Reidy, III, Esq.
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Dated: June 22, 2004

/S/ Christopher R. Donato
Christopher R. Donato
Assistant U.S. Attorney

CERTIFICATION PURSUANT TO L.R. 7.1 (A)(2)

I hereby certify that on June 22, 2004, I spoke with Attorney Robert Higgins, attorney for the plaintiff, and informed him of my intention to file this Motion to Dismiss and attempted in good faith to resolve the issues presented.

Dated: June 22, 2004

/S/ Christopher R. Donato
Christopher R. Donato
Assistant U.S. Attorney